

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION**

Heriberto Soto,	:	Case No. 4:08CV2919
	:	
Petitioner	:	Judge Donald C. Nugent
	:	
v.	:	Magistrate Judge David S. Perelman
	:	
J. T. Shartle, Warden of FCI-Elkton, et al.,	:	REPORT AND RECOMMENDED
	:	DECISION
Respondents	:	

When this action in habeas corpus pursuant to 28 U.S.C. §2241 was initiated on December 15, 2008 the pro se petitioner was confined at the Federal Correctional Facility at Elkton, Ohio. The relief sought in the petition was petitioner's immediate release from custody, on the basis that his continuing confinement "stems from credits the state authorities arbitrarily and capriciously failed to administer toward his confinement. The adverse effect of the missing credit has caused the Petitioner to serve longer sentence than what the state court and federal court imposed."

On May 26, 2009 respondent filed an "Answer And Return In Opposition To Petition For Writ Of Habeas Corpus And Motion To Dismiss Or, In The Alternative, Motion For Summary Judgment" (Doc. #9). The certificate of service reflects that a copy of this pleading was forwarded to the petitioner by regular mail at his current place of personal residence.

Petitioner has failed to respond to the motion, which could be deemed as a tacit acquiescence and serve as a basis for granting the motion.

More importantly, while the motion advances a variety of arguments for dismissal of the

petition, the most cogent is that the matter is moot. A declaration of Vanessa H. Smith, a Supervising Paralegal employed by the United States Department of Justice, Federal Bureau of Prisons, Northeast Regional Office (Motion Exhibit 1) states that “on May 13, 2009, petitioner was released from custody via good conduct time release from the Federal Correctional Institution in Elkton, Ohio.” This representation is confirmed by documentation appended to the declaration.

It is, therefore, recommended that this action be dismissed as moot.

s/DAVID S. PERELMAN
United States Magistrate Judge

DATE: August 12, 2009

OBJECTIONS

Any objections to this Report and Recommended Decision must be filed with the Clerk of Courts within ten (10) days of receipt of this notice. Failure to file objections within the specified time waives the right to appeal the District Court’s order. *See, United States v. Walters*, 638 F.2d 947 (6th Cir. 1981). *See, also, Thomas v. Arn*, 474 U.S. 140 (1985), *reh’g denied*, 474 U.S. 1111 (1986).